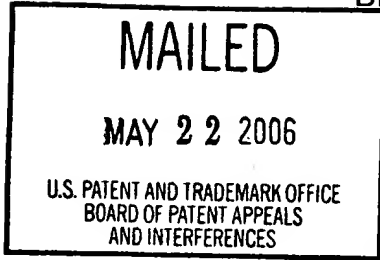


UNITED STATES PATENT AND TRADEMARK OFFICE



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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES  
\_\_\_\_\_

Ex parte GARY K. MICHELSON  
\_\_\_\_\_

Application No. 08/354,450  
\_\_\_\_\_

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER  
\_\_\_\_\_

This application was received at the Board of Patent Appeals and Interferences (BPAI) on April 13, 2006. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below:

1.) The electronic file contains two petitions under 37 C.F.R. § 1.181(a). One was filed on April 24, 2003 and the other was filed on September 1, 2005. Neither of these petitions has a corresponding Decision on Petition and therefore have not been officially resolved. These petitions must be determined before the BPAI will accept jurisdiction over the application.

2.) The examiner mailed a Supplemental Examiner's Answer on December 1, 2005, in response to appellant's reply brief filed on September 1, 2005. The Manual Of Patent Examining Procedure (MPEP) § 1207.05 (8th ed., Rev. 3, August 2005) states in part:

*37 CFR 41.43 Examiner's response to reply brief.*

(a)(1) After receipt of a reply brief in compliance with § 41.41, the primary examiner . . . may furnish a supplemental examiner's answer responding to any new issue raised in the reply brief.

. . .

**"Every supplemental examiner's answer must be approved by a Technology Center (TC) Director or designee."** (Emphasis added)

The supplemental examiner's answers mailed December 1, 2005, does not contain the required authorization.

Accordingly, it is

ORDERED that the application is being returned to the Examiner for:

1. the petitions noted above to be properly decided and made of record to the application,
2. a copy of the decisions on the petitions to be sent to appellant,
3. a copy of the decisions on the petitions to be scanned into the electronic file,

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4. the Examiner to resubmit the Supplemental Examiner's Answer with proper authorization if the examiner wishes to have it considered by the BPAI in its disposition of the appealed claims, and
5. for such further action as may be appropriate.

BOARD OF PATENT APPEALS  
AND INTERFERENCES

By:

A handwritten signature in black ink, appearing to read 'DMS', followed by a horizontal line.

DALE M. SHAW  
Deputy Chief Appeal Administrator  
(571) 272-9797

DMS/vsh

cc: MARTIN & FERRARO, LLP  
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